

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 156

Introduced by Quandahl, 31

Read first time January 10, 2003

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to banks and banking; to amend sections 8-1401
- 2 and 8-1402, Revised Statutes Supplement, 2002; to change
- 3 provisions relating to disclosure of confidential
- 4 information; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-1401, Revised Statutes Supplement,
2 2002, is amended to read:

3 8-1401. (1) No person or corporation or association
4 organized under the Business Corporation Act, the Credit Union Act,
5 the Nebraska Banking Act, ~~the Nebraska Depository Institution~~
6 ~~Guaranty Corporation Act,~~ the Nebraska Industrial Development
7 Corporation Act, the Nebraska Nonprofit Corporation Act, the
8 Nebraska Professional Corporation Act, the Nebraska Trust Company
9 Act, or Chapter 8, article 3 or 4, or otherwise authorized to
10 conduct business in Nebraska or organized under the laws of the
11 United States, shall be required to disclose any records or
12 information, financial or otherwise, that it deems confidential
13 concerning its affairs or the affairs of any person, ~~or~~
14 corporation, or association with which it is doing business to any
15 person, party, agency, or organization, unless: (a) The ~~(a)~~ the
16 disclosure relates to a lawyers trust account and is required to be
17 made to the Counsel for Discipline of the Nebraska Supreme Court
18 pursuant to a rule adopted by the Nebraska Supreme Court; (b) there
19 is first presented to such person, corporation, or association (i)
20 a lawful subpoena, summons, or warrant issued by a court of
21 competent jurisdiction to a law enforcement agency or (ii) a lawful
22 subpoena issued under the laws of this state by a governmental
23 agency exercising investigatory or adjudicative functions with
24 respect to a matter within the agency's jurisdiction; (c) a statute
25 by its terms or by rules and regulations adopted and promulgated
26 thereunder requires the disclosure, other than by subpoena,
27 summons, warrant, or court order; or ~~(b)~~ (d) there is presented to
28 such person, corporation, or association a court order of a court

1 of competent jurisdiction setting forth the exact nature and limits
2 of such required disclosure and a showing that all persons or
3 organizations to be affected by such order have had reasonable
4 notice and an opportunity to be heard upon the merits of such
5 order. The requesting party shall pay the costs of providing such
6 records or information pursuant to section 8-1402. This section
7 shall not apply to any duly constituted supervisory regulatory
8 agency of such person, corporation, or association, ~~to the~~
9 ~~production of records pursuant to a written demand of the Tax~~
10 ~~Commissioner under section 77-375, or~~ to disclosures governed by
11 rules for discovery adopted and promulgated pursuant to section
12 25-1273.01, ~~or to such cases for which specific disclosures are~~
13 ~~specifically required by other sections of the statutes heretofore~~
14 ~~or hereafter enacted,~~ except that the Department of Banking and
15 Finance shall be subject to the payment of cost provision of this
16 section when making inquiries that are beyond those normally made
17 in conducting examinations and inquiries for the purpose of
18 determining the safety and soundness of a financial institution,
19 but shall not be subject to the disclosure and reasonable notice
20 provisions of this section when making reasonable inquiries of any
21 person, corporation, or association for the purpose of enforcing
22 any of the laws over which the department has jurisdiction.

23 (2) Any person, corporation, or association which makes a
24 disclosure of records or information as required by subsection (1)
25 of this section shall not be held civilly or criminally liable for
26 such disclosure in the absence of malice, bad faith, intent to
27 deceive, or gross negligence.

28 (3) In cases arising under subdivisions (1)(b)(i) and

1 (ii) of this section, the subpoena, summons, or warrant shall be
2 accompanied by a certification that (a) a copy of the subpoena has
3 been served on the person whose information or records are being
4 sought by the person, party, agency, or organization seeking
5 disclosure of such information or records or (b) service has been
6 waived by the court for good cause.

7 (4) In cases arising under subdivision (1)(c) of this
8 section, the request for disclosure of information or records shall
9 be accompanied by a certification that notice of the request for
10 information or records has been served on the person whose
11 information or records are being sought by the person, party,
12 agency, or organization seeking disclosure of such information or
13 records.

14 (5) For purposes of this section:

15 (a) Governmental agency means any agency or department of
16 this state or any authorized officer, employee, or agent of an
17 agency or department of this state; and

18 (b) Law enforcement agency means any federal agency or
19 department or any agency or department of this state or of any
20 political subdivision of this state, or any authorized officer,
21 employee, or agent thereof authorized by law to enforce the law and
22 to conduct or engage in investigations or prosecutions for
23 violations of the law.

24 Sec. 2. Section 8-1402, Revised Statutes Supplement,
25 2002, is amended to read:

26 8-1402. If any person, corporation, or association
27 covered by section 8-1401 is required by court order, by lawful
28 subpoena, summons, or warrant, or by written demand pursuant to

1 ~~subsection (2) of section 77-375~~ under the provisions of section
2 8-1401 to disclose any records or information or, after receiving
3 the written permission of the person, corporation, or association
4 about whom records or information is being sought, voluntarily
5 consents to provide records or information in its possession, ~~it~~
6 such person shall be paid by the requesting person, party, agency,
7 or organization for the service. The requesting person, party,
8 agency, or organization shall pay five dollars per hour per person
9 for the time actually spent on the service or, if such person,
10 corporation, or association can show that its actual expense in
11 providing the records or information was greater than five dollars
12 per hour per person, it shall be paid the actual cost of providing
13 the records or information. No person, corporation, or association
14 has an obligation to provide any records or information pursuant to
15 section 8-1401, other than pursuant to a court order, a lawful
16 subpoena, summons, or warrant, ~~or a written demand pursuant to~~
17 ~~subsection (2) of section 77-375,~~ until assurances are received
18 that the costs due under this section will be paid.

19 Sec. 3. Original sections 8-1401 and 8-1402, Revised
20 Statutes Supplement, 2002, are repealed.